



प्रधान आयुक्त का कार्यालय, सीमा शुल्क, अहमदाबाद

“सीमा शुल्क भवन,” पहली मंजिल, पुराने हाईकोर्ट के सामने, नवरंगपुरा, अहमदाबाद – 380 009.

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PREAMBLE

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|------|--|---|---|
| A | फाइल संख्या / File No. | : | VIII/10-134/SVPIA-B/O&A/HQ/2023-24 VIII/10-210/SVPIA-B/O&A/HQ/2023-24 |
| B | कारणबताओनोटिस संख्या - तारीख / Show Cause Notice No. and Date | : | Waiver of Show Cause Notice |
| C | मूल आदेश संख्या / Order-In-Original No. | : | 217/ADC/VM/O&A/2023-24 |
| D | आदेश तिथि / Date of Order-In-Original | : | 31.01.2024 |
| E | जारी करने की तारीख / Date of Issue | : | 31.01.2024 |
| F | द्वारा पारित / Passed By | : | Vishal Malani, Additional Commissioner, Customs, Ahmedabad. |
| G | आयात कक्ष का नाम और पता / Name and Address of Importer / Passenger | : | To, (1) Qureshi Mohammed Ramjan, Mohalla Fatehpuriyan, Delhi Gate, Didwana, Nagaur, Rajasthan. (2) Shri Kundan Mal Kumawat, Ringis Road, Danta, Dist. Sikhar, Rajasthan. (3) Shri Hari Prasad Saini, Ward No. 22, Fatepur Shekawati, Rajasthan – 332301. |
| (1) | यह प्रति व्यक्ति के उपयोग के लिए निःशुल्क प्रदान किया जाता है जिन्हे यह जारी किया जाता है। | | |
| (2) | कोई भी व्यक्ति इस आदेश से स्वयं को असंतुष्ट पाता है तो वह इस आदेश के विरुद्ध अपील इस आदेश की प्राप्त किया तारीख के 60 दिनों के भीतर आयुक्त कार्यालय, सीमा शुल्क (अपील), ४वीं मंजिल, हुड़को भवन, ईश्वर भुवन मार्ग, नवरंगपुरा, अहमदाबाद में कर सकता है। | | |
| (3) | अपील के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए और इसके साथ होना चाहिए: | | |
| (i) | अपील की एक प्रति और; | | |
| (ii) | इस प्रति या इस आदेश की कोई प्रति के साथ केवल पांच (5.00) रुपये पे न्यायालय शुल्क टिकिट लगा होना चाहिए। | | |
| (4) | इस आदेश के विरुद्ध अपील करने इच्छुक व्यक्ति को ८.५% अधिकतम १० करोड़ शुल्क हम करना होगा जहां शुल्क या ड्यूटी और जुर्माना विवाद में है या जुर्माना जहां इस तरह की दंड विवाद में है और अपील के साथ इस तरह के भुगतान का प्रमाण पेश करने में असफल रहने पर सीमा शुल्क अधिनियम, १९६२ के धरा १२९ के प्रावधानों का अनुपालन नहीं करने के लिए अपील को खारिज कर दिया जायेगा। | | |

Brief facts of the case :

On the basis of passenger profile screening, one male passenger is suspected to be carrying high value dutiable goods and therefore a thorough search of all the baggage of the passenger as well as his personal search is required to be carried out under panchnama proceedings. Accordingly, in presence of the panchas, the AIU officers intercepted the said passenger with his checked-in baggage when the said passenger tries to exit the Green Channel at arrival hall of terminal 2 of Sardar Vallabhbhai Patel International Airport (SVPI), Ahmedabad. On being asked about his identity to the AIU officers, the passenger identified himself as **Qureshi Mohammed Ramjan** S/o Shri Mohammed Yusuf Qureshi and shows his Passport which is an Indian Passport bearing No. B6374698. Further, he informs that he has travelled from Dubai to Ahmedabad on 19.08.2023 by Indigo Flight No. 6E 1478 which reached Ahmedabad on 19.08.2023 and showed his Boarding Pass bearing Seat No. 9A and observe that the said passenger has two shoulder bags with him. The AIU officer asks the passenger, if he has anything to declare to the Customs, to which he denies.

2. The officers offered their personal search to the passenger, but the passenger denied the same politely. Then officers asked the passenger whether he wanted to be checked in presence of the Executive Magistrate or the Superintendent (Gazetted officer) of Customs, in reply to which the passenger in presence of two independent witnesses gave his consent to be searched in presence of the Superintendent of Customs. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. Thereafter the passenger, removed the metallic substances from his body such as mobile, purse etc., and kept it in a tray placed on the table there and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, beep sound was heard indicating that nothing objectionable/ dutiable was on his body/ clothes. Thereafter, the officers in presence of Panchas, asked the passenger whether he has concealed any substance in his body, to which he replied in negative.

The AIU officers again asked the passenger to pass through the DFMD to which the passenger again passed through DFMD and this time also beep sound was generated. The again denied that he has anything objectionable/ dutiable on his body/ clothes.

3. After personal search and thorough interrogation by the AIU officers, in presence of the panchas, the passenger confessed that he is carrying gold in bar form in the shoes and removes 8 gold TT bars from the shoes he has worn and handed over the same to the AIU Officers in presence of the panchas. The gold bars were having marking "ARG 10 TOLAS 999.0 ARG MELTER ASSAYER" on it. The AIU Officers asked the passenger to whom these 8 Gold TT Bars ware to be handed over. The passenger, Qureshi Mohammed Ramjan informs that the said gold is to be handed over to two persons viz. **Shri Hari Prasad and Shri Kundan Mal Kumawat** wearing light green/ blue T Shirt who are waiting near the tea shop for him outside the Terminal 2. So, the AIU Officers and Panchas reached near the tea shop outside Terminal 2 and see two persons with the identical T Shirt, waiting and having a suspicious profile. The AIU Officers and Panchas rushed to these persons and showed their Identity Card and introduced themselves and brought them to the AIU Office for further inquiry. The Officers also informed the passenger and the said two persons that smuggling of gold is punishable offence under Section 135 of Customs Act, 1962.

4. The AIU Officers in the presence of both the panchas asked both the persons about their identity to which they showed their personal ID cards and introduced themselves as Shri Kundan Mal Kumawat who lives in District Sikar, Rajasthan and Shri Hari Prasad Saini, who lives in Fatehpur Shekhawati, Rajasthan. The AIU Officers in presence of the panchas interrogate both the person and asked them the reason why they came here at SVPIA. On sustained interrogation, Shri Kundan Mal Kumawat admitted that he is coming from Rajasthan to receive a person whose name is Mohammad Ramjan Qureshi and coming from Dubai in Flight No. 6E 1478 and bringing gold with him. Shri Hari Prasad Saini also submitted that he is also came here to receive the above-mentioned person who is coming from Dubai. The passenger

admitted that on arrival, he did not declare the same to the Customs to clear it illicitly without payment of Customs Duty.

5. Thereafter, the Government Approved Valuer was called for verification of said recovered gold 8 TT Bars. Shri Kartikey Vasantrai Soni, the Government Approved Valuer after detailed verification submitted valuation report and confirmed that the weight of said gold is **933.120** grams. He certified that these gold bars are having purity 999.00/ 24 Kt. having tariff value of **Rs.48,30,417/-** (Rupees Fourty-Eight Lakhs Thirty Thousand Four Hundred Seventeen only) and market value of **Rs.56,22,048/-** (Rupees Fifty-Six Lakhs Twenty-Two Thousand Fourty-Eight only). The details of item recovered from the passenger are as under:

| Sr. No. | Details of Items | PCS | Net Weight (in grams) | Purity | Market Value (in Rs.) | Tariff Value (in Rs.) |
|---------|---|-----|-----------------------|----------------|-----------------------|-----------------------|
| 1. | Gold TT Bars MWG UAE 10 TOLAS 999.0 Melter Assayer | 8 | 933.120 | 999.0 24Kt. | 5622048 | 4830417 |

6. Accordingly, the said eight gold bars having purity 999.0/24 Kt. weighing 933.120 grams, recovered from Qureshi Mohammed Ramjan was seized vide Panchnama dated 19.08.2023, under the provisions of the Customs Act, 1962, on the reasonable belief that the said gold bar was smuggled into India by the said passenger with an intention to evade payment of Customs duty and accordingly the same was liable for confiscation under the Customs Act, 1962 read with Rules and Regulation made thereunder.

7. A statement of the said passenger, Qureshi Mohammed Ramjan was recorded under Section 108 of the Customs Act, 1962, wherein he admitted to have attempted to smuggle said foreign origin gold into India by way of concealing the same in the shoes worn by him with an intent of illicitly clearing the said gold and to evade payment of customs duty by way of adopting the modus operandi of smuggling the said gold.

8. RELEVANT LEGAL PROVISIONS:

A. THE CUSTOMS ACT, 1962:

I) Section 2 - Definitions.—*In this Act, unless the context otherwise requires,—*

(22) "goods" includes—

- (a) vessels, aircrafts and vehicles;
- (b) stores;
- (c) baggage;
- (d) currency and negotiable instruments; and
- (d) any other kind of movable property;

(3) "baggage" includes unaccompanied baggage but does not include motor vehicles;

(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with;

(39) "smuggling", in relation to any goods, means any act or omission which will render such goods liable to confiscation under section 111 or section 113;"

II) Section 11A – Definitions -*In this Chapter, unless the context otherwise requires,*

(a) "illegal import" means the import of any goods in contravention of the provisions of this Act or any other law for the time being in force;"

III) "Section 77 – Declaration by owner of baggage.—*The owner of any baggage shall, for the purpose of clearing it, make a declaration of its contents to the proper officer."*

IV) "Section 110 – Seizure of goods, documents and things.—*(1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:"*

V) "Section 111 – Confiscation of improperly imported goods, etc.—*The following goods brought from a place outside India shall be liable to confiscation:-*

(d) any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;

(f) any dutiable or prohibited goods required to be mentioned under the regulations in an arrival manifest or import manifest or import report which are not so mentioned;

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof;

- (j) any dutiable or prohibited goods removed or attempted to be removed from a customs area or a warehouse without the permission of the proper officer or contrary to the terms of such permission;
- (l) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made under section 77;
- (m) any goods which do not correspond in respect of value or in any other particular with the entry made under this Act or in the case of baggage with the declaration made under section 77 in respect thereof, or in the case of goods under transhipment, with the declaration for transhipment referred to in the proviso to sub-section (1) of section 54;"

VI) "Section 112 – Penalty for improper importation of goods, etc.- Any person, -

- (a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under Section 111, or abets the doing or omission of such an act, or
- (b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harboring, keeping, concealing, selling or purchasing or in any manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111, shall be liable to penalty.

VII) Section 119 in the Customs Act, 1962 :

119. *Confiscation of goods used for concealing smuggled goods.*
—Any goods used for concealing smuggled goods shall also be liable to confiscation.

B. THE FOREIGN TRADE (DEVELOPMENT AND REGULATION) ACT, 1992:

I) "Section 3(2) - *The Central Government may also, by Order published in the Official Gazette, make provision for prohibiting, restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made by or under the Order, the import or export of goods or services or technology."*

II) "Section 3(3) - *All goods to which any Order under sub-section (2) applies shall be deemed to be goods the import or export of which has been prohibited under section 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly."*

III) "Section 11(1) - *No export or import shall be made by any person except in accordance with the provisions of this Act, the rules and orders made thereunder and the foreign trade policy for the time being in force."*

C. THE CUSTOMS BAGGAGE DECLARATIONS REGULATIONS, 2013:

I) Regulation 3 (as amended) - *All passengers who come to India and having anything to declare or are carrying dutiable or prohibited goods shall declare their accompanied baggage in the prescribed form.*

9. DEFENCE REPLY:

All the Noticees (1 Passenger & 2 other persons) vide their letters dated 13.10.2023 & 22.12.2023, forwarded through their Advocate Shri Rishikesh J Mehra, wherein he inter alia mainly submitted that his client Qureshi Mohammed Ramjan has purchased the said 8 Gold TT Bars from Dubai, and had brought gold for his family from his personal savings and borrowed money from his friend. The Noticee purchased the said gold from M/s. BIN Jewellers LLC, Dubai bearing Bill No. 20657 dated 18.08.2023 issued in his name. In respect of the other Noticees, he submitted that the passenger Qureshi Mohammed Ramjan was detained and was forced to admit involvement of Shri Hari Prasad and Shri Kundan Mal Kumawat. The statement was not recorded as per say of the passenger and was forced to sign it.

10. PERSONAL HEARING:

Personal Hearing in this case was fixed on 24.01.2024. Shri Rishikesh J Mehra, Advocate appeared for personal hearing on behalf of the passenger Qureshi Mohammed Ramjan. Shri Rishikesh submitted written submissions dated 13.10.2023 and reiterated the same. He also submitted that his client is residing at Dubai and having residence visa and he is doing Job since 2008. He brought 8 gold bars, weighing 933.120 valued Rs.48,30,417/- (Tariff value), for his personal use purchased by himself for his family from his personal savings. He produced copy of purchase bill No. 20657 dated 18.06.2023, issued by M/s. BIN Jewellers LLC, Dubai. He produced copy of residence permit Id No. 784198063758878 of United Arab Emirates issued in his name and submitted that his client being an NRI and is eligible to bring the said gold. He reiterated that his client brought Gold for his personal use. He further submitted that his client is ready to pay applicable fine

and penalty and requested for re-export of seized gold. He requested to take lenient view in the matter and allow to re-export/ release of the gold on payment of reasonable fine and penalty.

Shri Rishikesh J Mehra, Advocate appeared for Personal Hearing on 30.01.2024 on behalf of two Noticees (i) Shri Kundan Mal Kumawat and (ii) Shri Hari Prasad Saini. Shri Rishikesh submitted that he has filed written submissions dated 22.12.2023 and reiterated the same. He submitted that both his clients have not role to play in the matter. Shri Ramjan Qureshi was intercepted and arrested by the AIU Officers when he arrived from Dubai on 19.08.2023, as he brought 8 gold bars totally weighing 933.120 grams. During the course of recording of his statement, Shri Ramjan Qureshi was forced to admit the names of Shri Kundan Mal Kumawat and Shri Hari Prasad Saini and hence, they both were also arrested on 20.08.2023. Both the Noticees do not have any claim over the said seized gold and hence penalty cannot be imposed upon them. He requested to take lenient view in the matter and allow to re-export/ release of the gold on payment of reasonable fine and penalty.

DISCUSSION & FINDINGS

11. I have carefully gone through the facts of the case and the submissions made by the passenger and the Noticees during the personal hearing. I find that the Noticees have requested for waiver of Show Cause Notice. The request for non-issuance of written Show Cause Notice is accepted in terms of the first proviso to Section 124 of the Customs Act, 1962 and accordingly, the matter is taken up for decision on merits.

12. In the instant case, I find that the main issue to be decided is whether the **933.120** grams of 8 gold TT bars, recovered from Qureshi Mohammed Ramjan having purity of 999.0/ 24 Kt. and having total Tariff Value of **Rs.48,30,417/-** and Market Value of **Rs.56,22,048/-** seized vide Seizure Memo/ Order dated 19.08.2023 under Panchnama proceedings dated 19.08.2023, on a reasonable belief that the same is liable for confiscation under Section 111 of the Customs Act, 1962 (hereinafter referred to as 'the Act') or not; whether the passenger and

two persons viz. Shri Kundan Mal Kumawat and Shri Hari Prasad Saini is liable for penal action under the provisions of Section 112 of the Act.

13. I find that the panchnama has clearly drawn out the fact that the passenger was intercepted when he was exiting the green channel without any declaration to the Customs and on suspicion; personal search of the passenger and his baggage was conducted. The passenger was asked to walk through the Door Frame Metal Detector (DFMD) machine after removing all the metallic objects he was wearing on his body/ clothes. Thereafter the passenger, removed the metallic substances from his body such as mobile, purse etc., and kept it in a tray placed on the table there and after that he was asked to pass through the Door Frame Metal Detector (DFMD) machine and while he passed through the DFMD Machine, a beep sound was heard indicating that something objectionable/ dutiable was on his body/ clothes. Thereafter, the officers in presence of Panchas, asked the passenger whether he has concealed any substance in his body, to which he replied in negative. After thorough interrogation by the officers, in presence of the panchas, the passenger confessed that he has hidden 8 gold TT Bars in his Shoes he worn. He admitted that on arrival, he did not declare the same to the Customs to clear it illicitly without payment of Customs Duty.

14. It is on record that the passenger had admitted that he was carrying the said gold with an intent to smuggle into India without declaring before the Customs Officers. It is also on record that the government approved valuer certified that the 8 gold TT bars having purity 999.0/24kt and tariff value of Rs.48,30,417/- and Market value of Rs.56,22,048/-.

15. The said gold totally weighing **933.120** grams is having purity of 999.0 having total Tariff Value of **Rs.48,30,417/-** and total Market Value of **Rs.56,22,048/-** and seized vide Seizure Memo/ Order dated 19.08.2023 under Panchanama proceedings dated 19.08.2023, in the presence of the passenger and Panchas. I also find that the said 933.120 grams of gold bar having Tariff Value of Rs.48,30,417/- and Market Value of Rs.56,22,048/- carried by the passenger Qureshi

Mohammed Ramjan appeared to be "smuggled goods" as defined under Section 2(39) of Customs Act, 1962. The offence committed is admitted by the passenger in his statement recorded on 19.08.2023 under Section 108 of the Customs Act, 1962. I also find that the passenger also admitted that the said 8 gold TT Bars were to be handed over to the persons viz. Shri Kundan Mal Kumavat and Shri Hari Prasad Saini ('other Noticees' for short), who were waiting near tea shop outside Terminal 2 of the SVPI Airport.

16. I also find that the passenger and the other Noticees had neither questioned the manner of the panchnama proceedings at the material time nor controverted the facts detailed in the panchnama during the course of recording of their statements. Every procedure conducted during the panchnama by the Officers was well documented and made in the presence of the panchas as well as the passenger and the other Noticees. In fact, in his statement, Qureshi Mohammed Ramjan has clearly admitted that he was aware that import of gold without payment of Customs duty was an offence but as he wants to save Customs duty, he had concealed the same in his shoes he worn with an intention to clear the said gold illicitly to evade Customs duty and thereby violated provisions of the Customs Act, the Baggage Rules, the Foreign Trade (Development & Regulations) Act, 1992, the Foreign Trade (Development & Regulations) Rules, 1993 and the Foreign Trade Policy, 2015-2020.

17. Further, the passenger has accepted that he had not declared the said gold on his arrival to the Customs authorities. It is clear case of non-declaration with an intent to smuggle the gold. Accordingly, there is sufficient evidence to say that the passenger had kept the said gold which was in his possession and failed to declare the same before the Customs Authorities on his arrival at SVPIA, Ahmedabad. The case of smuggling of gold recovered from his possession and which was kept undeclared with intent of smuggling the same and in order to evade payment of Customs duty is conclusively proved. Thus, it is proved that the passenger violated Section 77, Section 79 of the Customs Act for import/ smuggling of gold which was not for bonafide use and thereby violated Rule 11 of the Foreign Trade Regulation Rules 1993, and para

2.26 of the Foreign Trade Policy 2015-20. Further as per Section 123 of the Customs Act, 1962, gold is a notified item and when goods notified thereunder are seized under the Customs Act, 1962, on the reasonable belief that they are smuggled goods, the burden to proof that they are not smuggled, shall be on the person from whose possession the goods have been seized.

18. From the facts discussed above, it is evident that Qureshi Mohammed Ramjan had carried gold totally weighing 933.120 grams, having purity 999.0 while arriving from Dubai to Ahmedabad, with an intention to smuggle and remove the same without payment of Customs duty, thereby rendering the said gold of 24Kt/999.00 purity totally weighing 933.120 grams, liable for confiscation, under the provisions of Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By concealing the said gold paste and not declaring the same before the Customs, it is established that the passenger had a clear intention to smuggle the gold clandestinely with the deliberate intention to evade payment of Customs duty. The commission of above act made the impugned goods fall within the ambit of 'smuggling' as defined under Section 2(39) of the Act.

19. It is seen that the passenger had not filed the baggage declaration form and had not declared the said gold which was in his possession, as envisaged under Section 77 of the Act read with the Baggage Rules and Regulation 3 of Customs Baggage Declaration Regulations, 2013. It is also observed that the imports were also for non-bonafide purposes, as the same was carried for monetary benefits. Therefore, the said improperly imported gold totally weighing 933.120 grams concealed by the passenger without declaring to the Customs on arrival in India cannot be treated as bonafide household goods or personal effects. The passenger has thus contravened the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992.

20. It is, therefore, proved that by the above acts of contravention, the passenger has rendered the said gold totally weighing 933.120

grams, having Tariff Value of Rs.48,30,417/- and Market Value of Rs.56,22,048/- recovered and seized from the passenger vide Seizure Memo/Order dated 19.08.2023 under Panchanama proceedings dated 19.08.2023 liable to confiscation under the provisions of Sections 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. By using the modus of gold concealed, it is observed that the passenger was fully aware that the import of said goods is offending in nature. It is therefore very clear that he has knowingly carried the said gold and failed to declare the same on his arrival at the Airport. It is seen that he has involved himself in carrying, keeping, concealing and dealing with the impugned goods in a manner which he knew or had reasons to believe that the same is liable to confiscation under the Act. It, is therefore, proved beyond doubt that the passenger has committed an offence of the nature described in Section 112 of the Customs Act, 1962 making him liable for penalty under Section 112 of the Customs Act, 1962. Further, Shri Kundan Mal Kumawat and Shri Hari Prasad Saini has also admitted in their statement dated 20.08.2023 that they came to SVPI Airport to receive Shri Mohammed Ranjan Qureshi who is bringing gold from Dubai. It is therefore proved that the above referred two persons have also committed an offence of the nature described in Section 112 of the Customs Act, 1962 making them liable for penalty under Section 112 of the Customs Act, 1962.

21. I find that the Passenger confessed of carrying the said gold of 933.120 grams concealed, having purity 999.0/ 24 Kt. and attempted to remove the said gold from the Airport without declaring it to the Customs Authorities violating the para 2.26 of the Foreign Trade Policy 2015-20 and Section 11(1) of the Foreign Trade (Development and Regulation) Act, 1992 read with Section 3(2) and 3(3) of the Foreign Trade (Development and Regulation) Act, 1992 further read in conjunction with Section 11(3) of the Customs Act, 1962 and the relevant provisions of Baggage Rules, 2016 and Customs Baggage Declaration Regulations, 2013. As per Section 2(33) "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions

subject to which the goods are permitted to be imported or exported have been complied with. The improperly imported gold by the passenger without following the due process of law and without adhering to the conditions and procedures of import have thus acquired the nature of being prohibited goods in view of Section 2(33) of the Act.

22. It is quite clear from the above discussions that the gold was concealed and not declared to the Customs with the sole intention to evade payment of Customs duty. The record before me shows that the passenger did not choose to declare the prohibited/ dutiable goods and opted for green channel Customs clearance after arriving from foreign destination with the willful intention to smuggle the impugned goods. The said 8 gold bars totally weighing 933.120 grams, having Tariff Value of Rs.48,30,417/- and Market Value of Rs.56,22,048/- recovered and seized from the passenger vide Seizure Memo/ Order dated 19.08.2023 under Panchnama proceedings dated 19.08.2023. Despite having knowledge that the goods had to be declared and such import is an offence under the Act and Rules and Regulations made under it, the passenger had attempted to remove the said gold totally weighing 933.120 grams by deliberately not declaring the same by him on arrival at airport with the willful intention to smuggle the impugned gold into India. I therefore, find that the passenger has committed an offence of the nature described in Section 112(a) & 112(b) of the Customs Act, 1962 making him liable for penalty under provisions of Section 112 of the Customs Act, 1962.

23. I further find that the gold is not on the list of prohibited items but import of the same is controlled. The view taken by the Hon'ble Supreme Court in the case of Om Prakash Bhatia however in very clear terms lay down the principle that if importation and exportation of goods are subject to certain prescribed conditions, which are to be fulfilled before or after clearance of goods, non-fulfilment of such conditions would make the goods fall within the ambit of 'prohibited goods'. This makes the gold seized in the present case "prohibited goods" as the passenger, trying to smuggle it, was not eligible passenger to bring it in India or import gold into India in baggage. The

said gold, totally weighing 933.120 grams, was recovered from his possession and was kept undeclared with an intention to smuggle the same and evade payment of customs duty. By using this modus, it is proved that the goods are offending in nature and therefore prohibited on its importation. Here, conditions are not fulfilled by the passenger. The submissions made by the Noticees in the matter is an afterthought and are not acceptable.

24. In view of the above discussions, I hold that the said 8 gold TT bars totally weighing 933.120 grams, carried and undeclared by the passenger/ Noticee with an intention to clear the same illicitly from Airport and evade payment of Customs duty are liable for absolute confiscation. Further, the Noticee has carried the said gold by concealing to evade payment of Customs duty and to earn easy money. In the instant case, I am therefore, not inclined to use my discretion to give an option to redeem the said gold on payment of redemption fine, as envisaged under Section 125 of the Act.

25. Further, before the Kerala High Court in the case of Abdul Razak [2012(275) ELT 300 (Ker)], the petitioner had contended that under the Foreign Trade (Exemption from application of rules in certain cases) Order, 1993, gold was not a prohibited item and can be released on payment of redemption fine. The Hon'ble High Court held as under:

"Further, as per the statement given by the appellant under Section 108 of the Act, he is only a carrier i.e. professional smuggler smuggling goods on behalf of others for consideration. We, therefore, do not find any merit in the appellant's case that he has the right to get the confiscated gold released on payment of redemption fine and duty under Section 125 of the Act."

26. In the case of Samynathan Murugesan [2009 (247) ELT 21 (Mad)], the High Court upheld the absolute confiscation, ordered by the adjudicating authority, in similar facts and circumstances. Further, in the said case of smuggling of gold, the High Court of Madras in the case of Samyanathan Murugesan reported at 2009 (247) ELT 21(Mad) has ruled that as the goods were prohibited and there was concealment, the Commissioner's order for absolute confiscation was upheld.

27. Further I find that in a recent case decided by the Hon'ble High Court of Madras reported at 2016-TIOL-1664-HC-MAD-CUS in respect of Malabar Diamond Gallery Pvt Ltd, the Court while holding gold jewellery as prohibited goods under Section 2(33) of the Customs Act, 1962 had recorded that "restriction" also means prohibition. In Para 89 of the order it was recorded as under :

89. While considering a prayer for provisional release, pending adjudication, whether all the above can wholly be ignored by the authorities, enjoined with a duty, to enforce the statutory provisions, rules and notifications, in letter and spirit, in consonance with the objects and intention of the Legislature, imposing prohibitions/ restrictions under the Customs Act, 1962 or under any other law, for the time being in force, we are of the view that all the authorities are bound to follow the same, wherever, prohibition or restriction is imposed, and when the word, "restriction", also means prohibition, as held by the Hon'ble Apex Court in Om Prakash Bhatia's case (cited supra).

28. The Hon'ble High Court of Madras in the matter of COMMISSIONER OF CUSTOMS (AIR), CHENNAI-I Versus P. SINNASAMY 2016 (344) E.L.T. 1154 (Mad.) held-

Tribunal had arrogated powers of adjudicating authority by directing authority to release gold by exercising option in favour of respondent - Tribunal had overlooked categorical finding of adjudicating authority that respondent had deliberately attempted to smuggle 2548.3 grams of gold, by concealing and without declaration of Customs for monetary consideration - Adjudicating authority had given reasons for confiscation of gold while allowing redemption of other goods on payment of fine - Discretion exercised by authority to deny release, is in accordance with law - Interference by Tribunal is against law and unjustified -

Redemption fine - Option - Confiscation of smuggled gold - Redemption cannot be allowed, as a matter of right - Discretion conferred on adjudicating authority to decide - Not open to Tribunal to issue any positive directions to adjudicating authority to exercise option in favour of redemption.

29. In 2019 (370) E.L.T. 1743 (G.O.I.), before the Government of India, Ministry of Finance, [Department of Revenue - Revisionary Authority]; Ms. Mallika Arya, Additional Secretary in Abdul Kalam Ammangod Kunhamu vide Order No. 17/2019-Cus., dated 07-10-2019 in F. No. 375/06/B/2017-RA stated that it is observed that C.B.I. & C. had issued instruction vide Letter F. No. 495/5/92-Cus. VI, dated 10.05.1993 wherein it has been instructed that "in respect of gold seized for non-declaration, no option to redeem the same on redemption fine under Section 125 of the Customs Act, 1962 should be

given except in very trivial cases where the adjudicating authority is satisfied that there was no concealment of the gold in question".

30. Given the facts of the present case before me and the judgements and rulings cited above, the said gold totally weighing 933.120 grams, carried by the passenger is therefore liable to be confiscated absolutely. I therefore hold in unequivocal terms that the said gold totally weighing 933.120 grams, placed under seizure would be liable to absolute confiscation under Section 111(d), 111(f), 111(i), 111(j), 111(l) & 111(m) of the Customs Act, 1962. The case laws relied upon by the Noticee are of different facts and circumstances and are not applicable in this case.

31. I further find that the passenger had involved himself and abetted the act of smuggling of the said gold totally weighing 933.120 grams, carried by him. He has agreed and admitted in his statement recorded under Section 108 of the Customs Act, 1962 that he travelled with the said gold totally weighing 933.120 grams from Dubai to Ahmedabad. Despite his knowledge and belief that the said gold carried by him is an offence under the provisions of the Customs Act, 1962 and the Regulations made under it, the Passenger attempted to smuggle the said gold totally weighing 933.120 grams by concealing it. Thus, it is clear that the passenger has concerned himself with carrying, removing, keeping, concealing and dealing with the smuggled gold which he knows very well and has reason to believe that the same are liable for confiscation under Section 111 of the Customs Act, 1962. Therefore, I find that the passenger as well as the other two Noticees are liable for penal action under Sections 112(a)(i) of the Act and I hold accordingly.

32. Accordingly, I pass the following Order:

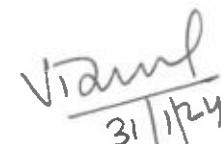
ORDER

- i) I order absolute confiscation of the said eight Gold TT Bars, totally weighing **933.120** grams having purity 999.0/24 Kt. and having Tariff value of **Rs.48,30,417/-** (Rupees Fourty-Eight Lakhs Thirty Thousand Four Hundred Seventeen Only)

and Market value of **Rs.56,22,048/-** (Rupees Fifty-Six Lakhs Twenty-Two Thousand Fourty-Eight Only) recovered from Qureshi Mohammed Ramjan and placed under seizure under the Panchnama proceedings dated 19.08.2023 and Seizure Memo Order dated 19.08.2023, under the provision of Section 111(d), 111(f), 111(i), 111(j), 111(l) and 111(m) of the Customs Act, 1962;

- ii) I impose a penalty of **Rs.25,00,000/-** (Rupees Twenty-Five Lakhs Only) on Shri Mohammad Ramjan Qureshi under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- iii) I impose a penalty of **Rs.10,00,000/-** (Rupees Ten Lakhs Only) on Shri Kundan Mal Kumawat under the provisions of Section 112(a)(i) of the Customs Act, 1962.
- iv) I impose a penalty of **Rs.10,00,000/-** (Rupees Ten Lakhs Only) on Shri Hari Prasad Saini under the provisions of Section 112(a)(i) of the Customs Act, 1962.

33. This order is issued without prejudice to any other action that may be taken against the passenger/ Noticee or any other person(s) concerned with said goods under the Customs Act, 1962, or any other law for the time being in force in India.



(Vishal Malani)

Additional Commissioner
Customs, Ahmedabad

F. No. VIII/10-134/SVPIA-B/O&A/HQ/2023-24 &
F. No. VIII/10-210/SVPIA-B/O&A/HQ/2023-24 Date: 31.01.2024
DIN: 20240171MN000000F489

BY SPEED POST A.D.

To,

- (1) **Qureshi Mohammed Ramjan,**
Mohalla Fatehpuriyan, Delhi Gate, Didwana, Nagaur, Rajasthan.
- (2) **Shri Kundan Mal Kumawat,**
Ringis Road, Danta, Dist. Sikhar, Rajasthan.
- (3) **Shri Hari Prasad Saini,**
Ward No. 22, Fatepur Shekawati, Rajasthan – 332301.

Copy to:

- (i) The Principal Commissioner of Customs, Ahmedabad. (Kind Attn: RRA Section).
- (ii) The Dy./Asstt. Commissioner of Customs (AIU), SVPIA, Ahmedabad.
- (iii) The Dy./Asstt. Commissioner of Customs, Prosecution, HQ, Ahmedabad.
- (iv) The Dy./Asstt. Commissioner of Customs (TRC), Ahmedabad.
- (v) The System In charge, Customs HQ, Ahmedabad for uploading on official web-site i.e. <http://www.ahmedabadcustoms.gov.in>.
- (vi) Guard File.